



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0452; FRL-8834-02-R9]

Air Quality State Implementation Plans; Approvals and Promulgations: California;

Opacity Testing of Heavy-Duty Diesel Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California State Implementation Plan (SIP) concerning particulate matter (PM) emissions from heavy-duty (HD) diesel vehicles. We are approving state rules that regulate PM emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0452. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, 75 Hawthorne

St., San Francisco, CA 94105. By phone: (415) 947-4152 or by email at buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On November 5, 2021 (86 FR 61100), the EPA proposed to approve the following rules into the California SIP.

Agency	Rule No.	Rule title	Amended	Submitted
CARB	Title 13, Division 3, Chapter 3.5	Heavy-Duty Diesel Smoke Emission Testing and Heavy-Duty Vehicle Emission Control System Inspections	07/01/2019	02/13/2020
CARB	Title 13, Division 3, Chapter 3.6	Periodic Smoke Inspections of Heavy- Duty Diesel-Powered Vehicles	07/01/2019	02/13/2020

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received nine comments from members of the public. These comments were generally supportive of the action and none raised any concerns with our proposed rule.

III. EPA Action

Nine comments were submitted, and none change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the California rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹ The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small

¹ 62 FR 27968 (May 22, 1997).

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the

U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: April 29, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. In § 52.220a, in paragraph (c), table 1 is amended by:

a. Adding a heading for “Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.5. (Heavy-Duty Diesel Smoke Emission Testing, and Heavy-Duty Vehicle Emission Control System Inspections)” after the entry for “2147(b)(3)”; and adding entries for “2180”, “2180.1”, “2181”, “2182”, “2183”, “2184”, “2185”, “2186”, “2187”, “2188” and “2189” under the newly added heading;

b. Adding a heading for “Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.6. (Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles)” after the newly added entry for “2189”; and adding entries for “2190”, “2191”, “2192”, “2193”, and “2194” under the newly added heading.

The additions read as follows:

§52.220a Identification of plan-in part.

(c)***

Table 1—EPA-Approved Statutes and State Regulations¹

State citation	Title/subject	State effective date	EPA approval date	Additional explanation

Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.5. (Heavy-Duty Diesel Smoke Emission Testing, and Heavy-Duty Vehicle Emission Control System Inspections)				
2180	Applicability.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT	Unless otherwise noted, this chapter applies to all diesel-powered and gasoline-powered

			Federal Register CITATION]	heavy-duty vehicles operating in California.
2180.1	Definitions.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Definitions for applicable vehicles, opacity standards, inspections, penalties and appeals,
2181	Responsibilities of the Driver and Inspector During the Inspection Procedure.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Sets forth the responsibilities of the vehicle inspector and driver during an inspection.
2182	Heavy-Duty Diesel Vehicle Smoke Opacity Standards and Test Procedures; Excessive Smoke.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Sets forth opacity standards and testing procedures.
2183	Inspection of the Emission Control System on a Heavy-Duty Vehicle.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Describes the inspection procedures inspector use to determine whether the emission control components on diesel vehicles have been tampered, inadequately maintained or defective.
2184	Refusal to Submit to Inspection Procedure.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Describes the consequences of a refusal to submit to a vehicle inspection.
2185	Civil Penalty Schedule.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Sets for the civil penalties for failing a vehicle inspection.
2186	Demonstration of Correction and Post-Repair Test or Inspection.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT Federal Register CITATION]	Sets for the requirements for a vehicle owner to demonstrate correction and post-inspection repair to pass an inspection.
2187	Vehicles Removed from Service.	July 1, 2019	[INSERT DATE OF PUBLICATION], [INSERT	Sets for the conditions upon which a vehicle failing inspection can be removed from, and return to, service.

			Federal Register CITATION]	
2188	Contesting a Citation.	July 1, 2019	[INSERT DATE OF PUBLICATION , [INSERT Federal Register CITATION]	Describes how a vehicle owner may contest a citation for failing and inspection.
2189	Severability of Provisions.	July 1, 2019	[INSERT DATE OF PUBLICATION , [INSERT Federal Register CITATION]	Provides that in the event any portion of the chapter is held to be invalid, unenforceable or unconstitutional, the remaining portions shall remain in effect.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.6. (Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles)				
2190	Vehicles Subject to the Periodic Smoke Inspection Requirements.	July 1, 2019	[INSERT DATE OF PUBLICATION , [INSERT Federal Register CITATION]	Defines the heavy-duty diesel- powered vehicles operating in California that are subject to periodic smoke inspection, as well as listing those that are exempt.
2191	Definitions.	July 1, 2019	[INSERT DATE OF PUBLICATION , [INSERT Federal Register CITATION]	Defines diesel vehicle fleets subject to the regulation and applicable testing procedures.
2192	Vehicle Inspection Responsibilities.	July 1, 2019	[INSERT DATE OF PUBLICATION , [INSERT Federal Register CITATION]	Sets forth the responsibilities of diesel vehicle fleet owners to comply with the requirements of the periodic smoke inspection program.
2193	Smoke Opacity Standards, Inspection Intervals, and Test Procedures.	July 1, 2019	[INSERT DATE OF PUBLICATION , [INSERT Federal Register CITATION]	Sets forth opacity testing standards, inspection intervals, test procedures and alternate test procedures.
2194	Record Keeping Requirements.	July 1, 2019	[INSERT DATE OF PUBLICATION , [INSERT Federal Register CITATION]	Requires vehicle owners to maintain records of test or alternate test results and provide them to the California Air Resources Board upon request.

¹ Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

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